



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 2, 1998

Mr. David K. Hudson
Assistant District Attorney
Tarrant County
Justice Center
401 W. Belknap
Fort Worth, Texas 76196-0201

OR98-0877

Dear Mr. Hudson:

You ask this office to reconsider our ruling in Open Records Letter No. 98-0327 (1998). Your request for reconsideration was assigned ID# 114549.

The Tarrant County Criminal District Attorney's Office ("Tarrant County") received a request for information relating to a particular police investigation. In Open Records Letter No. 98-0327 (1998), this office concluded in part that Tarrant County could not withhold the requested information under section 552.108(a) because you did not timely raise the exception to disclosure to our office. In your request for reconsideration, you argue that Tarrant County had fifteen working days in which to raise any applicable exceptions, based on an acknowledgment form you received from our office. You further state that you "requested and received from [our] office an extension of five additional business days in which to file [a] request for an opinion."

Section 552.301(a) of the Government Code specifically provides:

A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the exceptions under Subchapter C must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. The governmental body must ask for the attorney general's decision *and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.* [Emphasis added.]

Additionally, section 552.302 of the Government Code provides that "[i]f a governmental body does not request an attorney general decision as provided by Section 552.301(a), the information requested in writing is presumed to be public information."

We have reviewed your original request for a ruling dated November 4, 1997, your new arguments, and the acknowledgment form this office mails out to every governmental body upon receipt of a request for a ruling under section 552.301. The acknowledgment form clearly states that

if you have not already done so, please submit to this office within fifteen calendar (after 9/1/97 "business") days of your receipt of the open records request 1) a copy of the written request you received, (2) an explanation as to why the exceptions *you have raised* apply to those records, and (3) a copy of the requested documents with markings to indicate the precise information that you consider to be protected by the particular exceptions you have raised. [Emphasis added.]

The acknowledgment form letter presumes that a governmental body has already raised applicable exceptions pursuant to the statutory requirements in section 552.301(a). The form does not permit a governmental body to raise additional exceptions to disclosure. Furthermore, in your original request for a ruling, you only raise section 552.101 as an exception to disclosure and state that you will submit to the attorney general "on or before November 10, 1997 . . . the reasons why the above-referenced exceptions apply that would allow the requested information to be withheld." Your letter requesting a ruling does not reference section 552.108 as an applicable exception to disclosure. Moreover, there is no indication in the record that Tarrant County requested an additional five days to raise any other exceptions to required public disclosure.

Because of the statutory requirements, in most cases this office is not authorized to allow an extension of time for a governmental body to raise any applicable discretionary exceptions to disclosure, unless a governmental body provides compelling reasons for withholding the information. *See* Gov't Code § 552.302. You did not raise section 552.108 in a timely manner, therefore, this exception is presumed to be waived. Furthermore, you have made no demonstration that compelling reasons exist for withholding the information under section 552.108. We, therefore, affirm Open Records Letter No. 98-0327 (1998).

If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Deputy Chief
Open Records Division

LRD/rho

Ref.: ID# 114549

Enclosures: Submitted documents

cc: Mr. Christopher A. Troutt
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1400 West Abram Street
Arlington, Texas 76013
(w/o enclosures)